

## SENATE BILL NO. 408

INTRODUCED BY J. O'NEIL

A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING A JURY TRIAL IN A PROCEEDING FOR THE TERMINATION OF PARENTAL RIGHTS; AND AMENDING SECTION 41-3-607, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 41-3-607, MCA, is amended to read:

**"41-3-607. Petition for termination -- separate hearing -- right to counsel -- ~~no~~ jury trial.** (1) The termination of a parent-child legal relationship may be considered only after the filing of a petition pursuant to 41-3-422 alleging the factual grounds for termination pursuant to 41-3-609.

(2) If termination of a parent-child legal relationship is ordered, the court may:

(a) transfer permanent legal custody of the child, with the right to consent to the child's adoption, to:

(i) the department;

(ii) a licensed child-placing agency; or

(iii) another individual who has been approved by the department and has received consent for the transfer of custody from the department or agency that has custody of the child; or

(b) transfer permanent legal custody of the child to the department with the right to petition for appointment of a guardian pursuant to 41-3-444.

(3) If the court does not order termination of the parent-child legal relationship, the child's prior legal status remains in effect until further order of the court.

(4) At the time that a petition for termination of a parent-child relationship is filed, parents must be advised of the right to counsel, and counsel must be appointed for an indigent party.

(5) A guardian ad litem must be appointed to represent the child's best interests in any hearing determining the involuntary termination of the parent-child legal relationship. The guardian ad litem shall continue to represent the child until the child is returned home or placed in an appropriate permanent placement. If a respondent parent is a minor, a guardian ad litem must be appointed to serve the minor parent in addition to any counsel requested by the parent.

(6) There is ~~no~~ a right to a jury trial at proceedings held to consider the termination of a parent-child

1 legal relationship.

2 (7) If a jury trial is requested, the court shall take necessary steps to protect the confidentiality and best

3 interests of the child, including:

4 (a) scheduling the matter for trial at the earliest date possible, with the matter taking precedence over

5 all other matters;

6 (b) determining whether the testimony of the child is relevant and necessary;

7 (c) if the child's testimony is relevant, deciding whether the child will testify by deposition or by other

8 alternative means; and

9 (d) any other protective measures."

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